



A guide to what costs fees and expenses may be recoverable in the First-tier Tribunal (Property Chamber) (Residential Property)

The general rule

1. Usually, parties in residential property cases before the First-tier Tribunal (Property Chamber) ('the tribunal') have to pay their own expenses and legal costs unless there is some specific legal provision otherwise.
2. However, as the powers of the tribunal have been expanded, the provisions allowing it to make orders for costs have also been expanded.
3. These other 'provisions' where costs can be awarded are as follows.
 - Where there is a written contract (usually a lease) allowing a party (usually a landlord) to claim costs from the other party or parties (usually a tenant)
 - Where an Act of Parliament says so specifically
 - Where a party's representative has acted in such a way as to unreasonably increase costs incurred by another party (sometimes called a 'wasted costs' order) and
 - Where a party has acted unreasonably in bringing, defending or conducting a case before the tribunal

Written contract

4. This is the area which causes most confusion because the reason why costs are payable is because of the contract entered into between the parties. Many tenants in particular do not realise that by signing up to a long lease, they may have taken on this commitment.
5. There are three main categories: (a) where a lease says that a landlord can claim legal or other costs as a service charge or (b) where a lease says that a tenant must pay legal or other costs to a landlord for granting a permission e.g. to sublet or (c) where a lease says that if there is a breach of the lease or possible forfeiture, the landlord can claim for costs and expenses.

6. The first category is a service charge and the other two are administration charges. In either case the tribunal has the power to assess those costs so that only a reasonable amount is payable. Also, if a landlord wants to claim the costs incurred in connection with tribunal proceedings as part of a future service charge, the tribunal can make an order preventing that.

Act of Parliament

7. There are specific provisions in various Acts of Parliament which state that someone (usually a tenant) is liable to pay the reasonable costs of another (usually a landlord).
8. In the **Leasehold Reform Act 1967** and the **Leasehold Reform, Housing and Urban Development Act 1993** a tenant who wants to extend a lease or tenants who want to buy the freehold of a house or building containing flats have to pay the landlord's costs including a valuation fee.
9. In the **Commonhold and Leasehold Reform Act 2002** there are provisions enabling tenants who get together and comply with certain conditions to take over the management of a building. This is called the 'right to manage'. This Act of Parliament says that tenants who do this have to pay the landlord's costs.
10. In all these cases, the tribunal has the power to assess those costs so that only a reasonable amount is payable.

Wasted costs

11. This is a power given by the **Tribunals, Courts and Enforcement Act 2007**. It is not used very often and is where a legal or other representative for one party has behaved in such a way as to increase the costs incurred by the other e.g. by insisting on a full oral hearing when it was not necessary. Where orders are made, they are often made against the legal or other representatives themselves.
12. The tribunal decides whether there is any liability and, if so, assesses the reasonableness of the claim.

Unreasonable behaviour

13. This arises from rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** and enables a tribunal to say whether a party has behaved unreasonably in bringing, defending or conducting an application.

14. Again, this is often misunderstood. To make such an order, a tribunal must be satisfied that the **conduct** of the party is unreasonable. People sometimes think that a party who loses a case has automatically behaved unreasonably in bringing it or defending it. That is not the test.
15. Most cases have a winner or a loser. After all, that is what a tribunal is here to determine. However, as has been said, the general rule is that a loser does not have to pay the costs of the winner. It is only the conduct or behaviour which is relevant and it would have to be quite bad behaviour. To put it into context, an order could, in theory, be made that the winning party pay the costs of the losing party if the conduct of the winning party has been unreasonable.
16. As in the previous categories, the tribunal has the power to assess those costs so that only a reasonable amount is payable.

How much?

17. The tribunal's job, once liability is found, is to assess what is 'reasonable'. Legal costs are assessed in much the same way as a court i.e. by looking at the hourly charging rate of the lawyer and the time spent to see if they are reasonable.
18. Other costs and expenses will depend on what they are and whether the party getting the costs and expenses can provide evidence of the loss. Fees paid to the tribunal can be included and will be known to the tribunal. However, such things as loss of earnings, rail and bus fares, copying charges etc. are sometimes more difficult to prove. The tribunal just has to look at the claim and make a decision.
19. One area where people do tend to have difficulties is in claiming an hourly rate for their time. The tribunal has to decide what 'loss' has been incurred and this can be difficult when someone just tries to claim for their time without showing some sort of loss e.g. they would have been able to claim an hourly rate for other work.

Conclusions

20. The simple truth is that if you are claiming costs, fees and expenses, you have to prove not only that the tribunal has the power to order them to be paid but also that they are reasonable.
21. If you are having costs, fees and expenses claimed from you, check these things. It may be worth your while to take advice on whether there is a legal claim and, if so, the amount which would be reasonable.